



Law Council
OF AUSTRALIA

Legal Practice Section

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The Hon Barnaby Joyce MP
Chair
House Standing Committee on Industry, Innovation, Science and Resources
PO Box 6021
Parliament House
Canberra ACT 2600

By email: iisr.reps@aph.gov.au

Dear Chair

INQUIRY INTO AUSTRALIA'S WASTE MANAGEMENT AND RECYCLING INDUSTRIES

1. The Law Council of Australia welcomes the opportunity to make a submission to the House of Representative's Standing Committee on Industry, Innovation, Science and Resources (**the Committee**) regarding the *Inquiry into Innovative Solutions in Australia's Waste Management and Recycling Industries*, focusing on opportunities presented by waste materials, including energy production, innovative recycling approaches and export opportunities, and to also consider current impediments to innovation.
2. This submission was prepared by the Australian Environment and Planning Law Group (**AEPLG**) from the Law Council of Australia's Legal Practice Section.
3. As a preliminary observation, the AEPLG notes that inquiries and reports in this area are undertaken frequently, without effectively implementing all recommendations generated. As such, their recommendations appear to be producing little significant change, despite significant time and cost invested to complete each inquiry.
4. In preparing this submission, the AEPLG draws upon the recommendations of the following previous reports concerned with waste management:
 - Senate Standing Committee on Environment and Communications, *Never waste a crisis: the waste and recycling industry in Australia* (Report, 2018) (**2018 Waste and Recycling Report**);
 - Department of Water and Environmental Regulation (Western Australia), *Amendments proposed following the decision on Eclipse Resources Pty Ltd v The State of Western Australia [No.4] (2016) WASC 62* (Consultation Paper, 2018) (**Eclipse Report**);
 - Department of the Environment and Energy, *Threat Abatement Plan for the Impacts of Marine Debris on Vertebrate Marine Life of Australia's Coasts and Oceans* (2018) (**Marine TAP 2**)

- Senate Standing Committee on Environment and Communications, *Toxic tide: the threat of marine plastic pollution in Australia* (Report, 2015) (**Marine Plastic Report**);
 - Department of the Environment and Energy, *Threat Abatement Plan for the Impacts of Marine Debris on Vertebrate Marine Life: Review 2009 – 2014* (2015) (**Marine TAP 1 Review**); and
 - Department of the Environment and Energy, *Threat Abatement Plan for the Impacts of Marine Debris on Vertebrate Marine Life* (2009) (**Marine TAP 1**).
5. This submission follows the elements of the Terms of Reference for the current Inquiry.

(a) Industrial, commercial and domestic waste

6. The 2018 Waste and Recycling Report recommended that the Australian, state and territory governments agree to a phase out of petroleum-based single-use plastics by 2023.¹ The AEPLG notes this deadline is approaching, and that vast work is required to achieve that goal. The AEPLG notes the importance of reducing Australia's dependence on single use plastic and the need for urgent policy reform to drive reduction.
7. In 2017-18 Australia generated 3.4 million tonnes of plastics but only 9.4 per cent (320,000 tonnes) was recycled. Of this 320,000 tonnes, only 46 per cent (145,700 tonnes) was reprocessed in Australia with 54 per cent (174,300 tonnes) exported for reprocessing.² The 2018 Waste and Recycling Report recommended prioritising the establishment of a circular economy in which materials are used, collected, recovered, and re-used, including domestically.³ These figures echo the urgent need for Australia to develop sustainable domestic markets for recycling plastic products. The AEPLG also notes that in recent months, particularly in Victoria, there has been considerable media attention surrounding municipal council recycling, largely arising from contaminating events and fires at various recycling sites. Whilst recycling is a key focus for most councils, it is imperative that the same occurs in a responsible and effective manner.
8. The AEPLG emphasises the importance of establishing efficient domestic recycling markets, promoting a sustainable economy and retaining domestic production. Implementing the 2018 Waste and Recycling Report recommendation to establish a Plastics Co-Operative Research Centre could lead Australia's research efforts into reducing plastic waste, with positive follow-ons in reducing ocean and waterway contamination and finding entrepreneurial end markets for recovered plastic.⁴
9. The AEPLG notes that no National Waste Report appears to have been published since 2018 despite the 2018 Waste and Recycling Report recommendation that it be

¹ Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018) rec 4.

² World Wide Fund for Nature (WWF), 'The state of Australia's recycling - how did we get into this mess?' (Blog Post, 9 August 2019) <<https://www.wwf.org.au/news/blogs/the-state-of-australias-recycling-how-did-we-get-into-this-mess#gs.trsp3u>>.

³ Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018) rec 1.

⁴ Ibid rec 5.

published at least biennially. The AEPLG notes the introduction of the Hazardous Waste in Australia Report 2019.

10. The AEPLG encourages the Australian Government to support state, territory, and local governments in ensuring effective education programs to assist public understanding of recycling. Educating consumers and enabling them to make informed choices will assist in driving change from the bottom up.

(b) Waste in waterways and oceans

11. 'Injury and fatality to vertebrate marine life caused by ingestion of, or entanglement in, harmful marine debris' is listed as a key threatening process under section 183 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). A key threatening process is a process that 'threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community'.
12. The AEPLG notes the Marine TAP 1 Review found that, despite progress, particularly in beach clean-up efforts, the key threatening process had not been abated and the objectives of the 2009 Marine TAP 1 had not been met.⁵ The matter was referred to the Senate, which resulted in the 2016 Marine Plastic Report, following which Marine TAP 2 was published in 2018. The AEPLG reiterates concerns that despite multiple inquiries and reviews covering the same topics, quantifiable on the ground change is not occurring.
13. The AEPLG notes its recommendation to the 2015 Senate Committee preceding the Marine Plastic Report that there be a national initiative to phase-out the use of non-biodegradable single use plastic bags across Australia. Whilst Victoria since introduced such legislation, many retailers themselves withdrew single use plastic bags. There is still no uniform national approach. Government action is required to complement private initiatives.

(c) Landfill reduction

14. The AEPLG acknowledges that waste levies are intended to encourage the diversion of waste from landfill to recycling. However, waste levies require careful management. A rapid increase to the landfill levy in Western Australia resulted in the waste stockpiling in the Perth metropolitan area.
15. State government waste levies are currently imposed in New South Wales, Victoria, South Australia, Western Australia and the Australian Capital Territory. Tasmania's waste levy is voluntary, whilst there is currently no levy in either Queensland or the Northern Territory.⁶ In Western Australia, issues arose with the application of the landfill levy to a waste recycler which resulted in amendments to the regime in that state.⁷
16. The AEPLG recommends a consistent, national approach to support the Australian waste recycling industry. Inconsistency in landfill levies and over-aggressive waste management regulations can create increases in illegal and environmentally

⁵ Department of Environment and Energy (Cth), *Threat Abatement Plan for the Impacts of Marine Debris on the Vertebrate Life of Australia's Coasts and Oceans* (2018) 4.

⁶ Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018) ch 4.

⁷ See *Eclipse Resources Pty Ltd v the State of Western Australia* [No. 4] [2016] WASC 62; and *Eclipse Resources Pty Ltd v The Minister for Environment* [No 2] [2017] WASCA 90.

irresponsible activities. A national approach would also remove incentives to transport waste for levy avoidance purposes.⁸

17. Consumers are concerned above the environmental issues of plastic packaging but are often unwilling to spend more on sustainable products.⁹ This gap in funding requires urgent attention. The AEPLG repeats the recommendation made in its submission to the 2016 Eclipse Report to introduce specific exemptions to state and territory waste levies for the re-use of waste-derived materials. The AEPLG supports the development of incentives such as landfill credits, rewarding those who reduce their landfill waste, or tax credits to those choosing to manufacturer using recycled materials.

18. The AEPLG reiterates Tyrecycle's submission to the 2018 Senate Waste and Recycling Report:

The waste management sector is profit driven, and as such waste collectors will look to find the cheapest point of disposal for waste materials. The landfill levy aims to set a price on disposal to landfill that is higher than the cost of recycling, such that recycling becomes a more attractive end-point. We see this successfully applied in NSW, where landfill costs (within the regulated zone) are in excess of \$250/tonne, which makes the landfilling of tyres uneconomical when compared to recycling alternatives.¹⁰

19. To further reduce landfill and promote Australia's domestic recycling programme, the AEPLG recommends that the Australian Government work with state, territory and local governments to assist recyclers to increase the diversion of material from landfill, improve the quality of materials recovered through collection programs, improve materials sorting at recycling facilities and assist manufacturers to increase the amount of recycled material used in production.¹¹ The AEPLG views this not only as a waste reduction measure, but also likely to produce economic growth and opportunities.

20. The AEPLG also reiterates comments made in its submission to the Eclipse Report that subject to appropriate regulatory oversight, an expanded definition of 'uncontaminated fill' (or the equivalent terminology depending on the jurisdiction concerned) or a new legislative mechanism to facilitate the use of waste-derived materials for beneficial uses and encourage the re-use of waste-derived materials is desirable.

⁸ Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018).

⁹ Jewel Topsfield, 'Landfill Credits and incentives to recycle they key to reducing waste', *Sydney Morning Herald* (online, 26 September 2018) <<https://www.smh.com.au/politics/federal/landfill-credits-and-incentives-to-recycle-the-key-to-reducing-waste-20180926-p5066z.html>>.

¹⁰ Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018) 45 citing, Tyrecycle, Submission No 21 to Senate Environment and Communications Reference Committee, Parliament of Australia, *Inquiry into the Waste and recycling industry in Australia* (11 October 2017).

¹¹ See Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018).

21. For the remaining waste that cannot be efficiently recycled, the AEPLG encourages the Australian Government to work with state and territory governments to ensure implementation of harmonised, best-practice landfill standards.¹²

(d) Other related matters.

Polluter Pays

22. The AEPLG notes that any approach led by the Federal Government should reinforce the polluter pays principle in waste management, especially with respect to illegal dumping.
23. Waste service charges, levied by local governments, offer potential means for local government to recover waste management costs. Some States (e.g. Victoria from 2016) have a cap imposing an upper ceiling on annual rates.¹³ In some instances, local governments are using waste service charges (where such charges fall outside the definition of rates) to circumvent the cap. The cap, combined with exponential increases to local government in providing waste management services, has seen councils exploring other powers to impose particular waste service charges on all ratepayers, including ratepayers who receive no waste collection or disposal services.
24. Some municipal waste regional groups have taken a 'hard line' on existing recycling contractors under existing contracts, refusing to renegotiate terms when offshore processing options unexpectedly closed. This can force such companies to stockpile, having no viable alternative
25. Effective management of waste and recycling must properly recognise the real costs and seriously consider appropriate financial incentives to manufacturers to substantially reduce the product 'at source'. Management of domestic, commercial and industrial waste urgently requires a national approach to its financing and incentivisation.
26. One approach to incentives could take the form of a tax deduction on manufacturers for utilising recycled or sustainably sourced materials into their production lines. At present, subsection 40-755(1) of the *Income Tax Assessment Act 1997* (Cth) (**ITAA**) allows an immediate deduction for expenditure incurred for the sole or dominant purpose of carrying on environmental protection activities.
27. The ITAA was recently amended to include multiple purpose activities that are undertaken to prevent contamination of waterways may include anti-erosion activities and the impact of undertaking environmental protection activities to remedy pollution that has occurred as a result of the activities of more than one person. It also sought to clarify what constitutes an 'environmental protection activities', being actions to

prevent, fight or remedy pollution resulting, or likely to result, from your earning activity or from the site of your earning activity or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity and to treat, clean up, remove or store waste resulting, or likely to result, from your earning

¹² Ibid.

¹³ Government of Victoria, *Council rates and charges* (Web Page, 16 September 2019) <<https://www.localgovernment.vic.gov.au/our-programs/council-rates-and-charges>>.

*activity on or from the site of your earning activity on or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity.*¹⁴

28. A similar approach could be formulated to tackle the urgent financial and environmental issues posed by increasing levels of waste, along with increasingly limited methods of disposal.

Land use policy

29. In designing a national approach to waste management, the Federal government should ensure that the standards and obligations in such an approach can be easily integrated with state land use planning policies and frameworks.

Product Stewardship Schemes

30. The AEPLG supports the recommendation of the 2018 Senate Waste and Recycling Report that product stewardship schemes established under the *Product Stewardship Act 2011* (Cth) be mandatory. The Report recommended establishing mandatory product stewardship schemes for tyres, mattresses, e-waste, and photovoltaic panels.¹⁵
31. The AEPLG recommends that a phase-out target for plastic food and beverage containers be introduced under the Product Stewardship Amendment (Packaging and Plastics) Bill 2019 (Cth) (**Bill**) (currently under review by the Senate's Environment and Communications Legislation Committee) given that currently they are often not recycled by Australian consumers. The rate of plastic packaging recycling over the last decade has not increased and has remained at around 30 per cent.¹⁶ The AEPLG considers that to achieve the results intended by the Bill, decisions around materials used in product packaging must be shifted away from consumers and retailers to upstream manufacturers. Consumers will not use single-use plastic food containers and plastic beverage cups if such products are unavailable for purchase or are not supplied to them by Australian food retailers. Coca-Cola, one of the world's biggest plastic waste producers, has confirmed that they will not reform their single use packaging production choices.¹⁷ As such, the onus is with both state and federal governments to effectively halt the availability of single use plastic items to retailers. Such domestic change may become an effective driver of change by manufacturers.
32. The AEPLG also supports the recommendation of the 2018 Senate Waste and Recycling Report that the Product Stewardship Advisory Committee be re-established and tasked with recommending products for listing under the Product Stewardship Act.¹⁸

¹⁴ Australian Tax Office (Cth), *Draft Taxation Ruling TR2019/D3* (2019)

<<https://www.ato.gov.au/law/view/document?DocID=DTR/TR2019D3/NAT/ATO/00001>>

¹⁵ Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018) rec 12.

¹⁶ Blue Environment Pty Ltd, *National Waste Report 2018* (Report prepared for the Department of the Environment and Energy(Cth), 19 November 2018).

¹⁷ Daniel Thomas, 'Davos 2020: People still want plastic bottles, says Coca-Cola', *BBC News* (online, 21 January 2020) <<https://www.bbc.com/news/business-51197463>>.

¹⁸ Senate Environment and Communications Reference Committee, Parliament of Australia, *Never waste a crisis: the waste and recycling industry in Australia* (Report, June 2018) rec 15.

Contact

33. The Law Council would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact AEPLG Chair, Robyn Glindemann on robyn.glindemann@lantegy.com.au.

Yours sincerely

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